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10-14585

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

IN RE:

No. 2:10-bk-14666-RTBP

Dean Cody  
Debtor.

Chapter 13

Wells Fargo Bank, N.A.  
Movant,

**MOVANT'S MOTION TO LIFT  
THE AUTOMATIC BANKRUPTCY STAY**

vs.

RE: Real Property Located at  
6527 West Matilda Lane  
Glendale, AZ 85308

Dean Cody, Debtor; Edward J. Maney, Trustee.

Respondents.

Movant hereby requests an order granting relief from the automatic stay of 11 U.S.C. 362(a), and to permit Movant to foreclose the lien of its Deed of Trust on real property owned by Debtor, by trustee's sale, judicial foreclosure proceedings or the exercise of the power of sale, and to obtain possession and control of the real property.

This motion is supported by the attached Memorandum of Points and Authorities, which is

...

...

1 incorporated herein by this reference.

2 DATED this 7th day of January, 2011.

3 Respectfully submitted,

4 TIFFANY & BOSCO, P.A.

5  
6 BY /s/ LJM # 014228

7 Mark S. Bosco

8 Leonard J. McDonald

9 Attorney for Movant

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 Dean Cody filed a voluntary petition for protection under Chapter 13 of the Bankruptcy Code.  
12 Edward J. Maney was appointed Trustee of the bankruptcy estate.

13 Debtor has an interest in certain real property located in County, Arizona, more particularly  
14 described as:

15 LOT 226, THE HIGHLANDS AT ARROWHEAD RANCH, ACCORDING TO THE PLAT OF  
16 RECORD IN THE OFFICE OF MARICOPA COUNTY, ARIZONA, IN BOOK 420 OF MAPS,  
17 PAGE 34.

18 Debtor has executed a Note secured by a Deed of Trust, dated January 19, 2009, recorded in the  
19 office of the Maricopa County Recorder's Office. True copies of the Note and Deed of Trust are annexed as  
20 Exhibits "A" and "B", respectively, and made a part hereof by this reference.

21 The Note and Deed of Trust reflect Suburban Mortgage, Inc. An Arizona Corporation as  
22 "Lender". Upon information and belief the original lender is no longer in business and is not in possession  
23 of the custodial file. Pursuant to the terms of the Note and Deed of Trust Mortgage Electronic Registration  
24 Systems, Inc. "MERS" is a separate Corporation that is acting as nominee for Suburban Mortgage, Inc. An  
25 Arizona Corporation.

26 The Note and the beneficial interest in the Deed of Trust is currently held by Wells Fargo Bank,  
N.A.. The Assignment of Deed of Trust was recorded in the Official Records of County, State of  
Arizona. A true and correct copy of the Assignment of Deed of Trust is attached hereto as Exhibit "C"  
and incorporated herein by reference.

1  
2 By virtue of the Note and Deed of Trust, Movant has a secured interest in the property described  
3 herein and a secured claim against Debtor. Movant may seek leave of Court to specify any further  
4 encumbrances against the Property at the time of the Preliminary and/ or Final Hearing hereon.

5 Debtor is in default on the obligation to Movant for which the property is security, and payments  
6 are due under the Promissory Note from and after February 1, 2010. Post-petition payments are due as  
7 follows:

|  |                   |
|--|-------------------|
| <b>3 Monthly Payments(s) at \$1,580.05</b>   | <b>\$4,740.15</b> |
| <b>(November 1, 2010 - January 1, 2011)</b>  |                   |
| <b>2 Late Charge(s) at \$63.20</b>           | <b>\$126.40</b>   |
| <b>(November 1, 2010 - December 1, 2010)</b> |                   |
| <b>Motion for Relief Filing Fee</b>          | <b>\$150.00</b>   |
| <b>Attorneys Fees</b>                        | <b>\$650.00</b>   |
| <b>Suspense Amount</b>                       | <b>(\$29.85)</b>  |
| <b>Total</b>                                 | <b>\$5,636.70</b> |

12  
13 Furthermore, a payment becomes due on the 1st day of every month thereafter, and a late charge  
14 becomes due on any payment not paid within fifteen (15) days from the date the monthly payment is due.

15 Debtor is indebted to Movant for the principal balance in the amount of \$251,928.46, plus  
16 accruing interest, costs, and attorneys fees.

17 Further, Movant seeks relief for the purpose of foreclosing its Deed of Trust against the Debtor's  
18 interest in the real property located at 6527 West Matilda Lane , Glendale, AZ. The Movant further  
19 seeks relief in order to contact the Debtor by telephone or written correspondence regarding a potential  
20 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss  
21 Mitigation Agreement, and may enter into such agreement with Debtors. However, Movant may not  
22 enforce, or threaten to enforce, any personal liability against Debtors if Debtors' personal liability is  
23 discharged in this bankruptcy case.

24  
25 Pursuant to the Note and Deed of Trust Movant is allowed to request this court to grant reasonable  
26 attorney's fees and costs and allowing payment of Movant's attorney's fees and costs pursuant to 11  
U.S.C. Section 506(b) which state as follows:

*To the extent that an allowed secured claim is secured by property value of which, after any  
recovery under subsection (c) of this section, is greater than the amount of such claim, there shall*

1 *be allowed to the holder of such claim, interest on such claim and any reasonable fees/costs, or*  
2 *charges provided for under the agreement which such claim arose.*

3 **CONCLUSION**

4 Movant requests that the court enter an order vacating the automatic stay of 11 U.S.C. Section  
5 362(a) and Movant may immediately enforce and implement the order for relief from the automatic stay  
6 as to the debtor their bankruptcy estate, the property, and Movant; to allow Movant to foreclose the lien of  
7 its Deed of Trust or Mortgage; to evict debtors and/or successors of debtor and to obtain ownership,  
8 possession and control of the Property.

9 DATED this 7th day of January, 2011.

10 BY /s/ LJM # 014228  
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14 Ste. 300  
15 Phoenix, Arizona 85016  
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